

**REMARKS/ARGUMENTS**

In the specification, paragraphs [0001], [0005], [0006], [0009], [0022], and [0041]-[0043] have been amended to address minor grammatical issues and to enhance consistency of the description. No new matter has been added to the specification.

The Office Action mailed August 8, 2008, has been received and reviewed. Claims 1 through 14 are currently pending in the application. Claims 1 through 14 stand rejected. Applicant has amended claims 1 through 9, 13 and 14 to enhance antecedent basis, and respectfully requests reconsideration of the application as amended herein. No new matter has been added to the claims, and no claim scope has been surrendered with respect to the claims as originally filed.

**35 U.S.C. § 102(b) Anticipation Rejections**

Anticipation Rejection Based on Patent No. DT 26 00 173

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by DT 26 00 173. Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Unless a single prior art reference describes “all of the limitations claimed” and “all of the limitations [are] arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.” *Net MoneyIN Inc. v. VeriSign Inc.*, No. 07-1565, slip op. at 17-18 (Fed. Cir. Oct. 20, 2008). A single prior art reference must “clearly and unequivocally” describe the claimed invention “without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.” *Id.* at 19 (citing *In re Arkley*, 455 F.2d 586, 587 (C.C.P.A. 1972)).

The 35 U.S.C. § 102(b) anticipation rejection of claim 1 is improper because the reference, hereinafter “Boguth,” fails to describe each and every element as set forth in claim 1, arranged in the same way as recited in the claim.

Boguth does not describe a support frame, as his pile driving mechanism is clearly supported on a vehicular “excavator” (see translation) through an outrigger 11. To the extent outrigger 11 in combination with leader 6 and adjusting devices 9 and 10 may be characterized as a support frame, which Applicant does not concede, there is no lower end of a support frame mounted on a footing, as recited in the claim.

Boguth appears to have a mechanism for gripping a pile 7 in the form of guide tongs 8. Boguth also appears to have a vibrating ram 1 for driving a pile 7. However, while vibrating ram 1 may be said to be indirectly pivotally connected to and supported by outrigger 11, it is only linearly slidable along leader 6 with guide skid 4, and thus cannot be said to be pivotally connected to any support frame. Applicant concedes that mount 3 suspended from guide skid 4 enables rotation of vibrating ram 1 about a vertical axis parallel to leader 6, but such an arrangement does not meet the recited claim limitations. Further, guide tongs 8 are not described as even connected to any other component, and in FIGS. 2 and 3 of Boguth are shown resting on the ground. Accordingly, guide tongs 8 are not 1) supported by or 2) pivotally connected to any support frame. Therefore, claim 1 is not anticipated.

In addition, as there is no pivotal connection of both of the gripping and pile driving mechanisms of Boguth to any support frame, there is no consequential enablement of a pile gripped by any gripping mechanism to be aligned in a desired orientation relative to the frame prior to being driven into the ground.

Claim 2 is allowable as depending from claim 1.

Anticipation Rejection Based on Patent No. EP 0 496 167

Claims 1 through 3 stand rejected under 35 U.S.C. § 102(b) as being anticipated by EP 0 496 167. Applicant respectfully traverses this rejection, as hereinafter set forth.

Claim 1 is not anticipated by the reference, hereinafter “Sano,” fails to describe each and every element as set forth in claim 1, arranged in the same way as recited in the claim.

Sano does not describe a support frame but, rather, suspends his vibrational pile driver apparatus from a coupling arm 12 attachable to an arm of a construction machine. Further, there is no support frame, or equivalent, having a lower end mounted on a footing, since the coupling arm is supported in a cantilevered manner from the aforementioned construction machine.

In addition, while Sano describes a mechanism for gripping a pile and a mechanism for driving a pile into the ground, once again they are not supported by a support frame. Further, to the extent coupling arm 12 may be characterized as a support frame, which Applicant does not concede, the gripping mechanism and pile driving mechanism are supported by and pivotally connected to hanger unit 14 and not to coupling arm 12.

Therefore, claim 1 is not anticipated by Sano.

Claim 2 is allowable as depending from claim 1 and, further, because in Sano there is no pivotal connection between any support frame mounted on a footing and his gripping and pile driving mechanism which enables angular adjustment of a pile gripped by the gripping mechanism relative to the support frame.

Claim 3 is allowable as depending from claim 1 and, further, because Sano fails to describe a pivotal adjustment actuator including a hydraulically actuated cylinder connected between a support frame and a pile driving and/or gripping mechanism. Sano's hydraulic cylinders 32 are connected between hanger unit 14 and a rocking arm 35 fixed to shaft 31 and main body 20 comprising vibrator 15 and chuck 16.

#### Anticipation Rejection Based on Patent No. GB 747,338

Claims 4 through 6 and 9 through 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by GB 747,338. Applicant respectfully traverses this rejection, as hereinafter set forth.

Applicant respectfully submits that the reference, hereinafter "GB," fails to describe each and every element as set forth in claim 4, arranged in the same way as recited in the claim. Applicant first notes that there is no disclosure whatsoever of the details of the alleged pile driving mechanism other than that platform 1 "supports the runner adapted to guide a pile or a tube 2 to be driven into or pulled out from the ground. The platform further carries the engine, the winch, the pump and other units required for the various steps to be performed." GB, page 2,

lines 57-63. Thus, there is no description of a pile gripping mechanism or a pile driving mechanism. It is also noted that there is no description in GB of a support frame mounted on a footing.

Further, there is no description in GB of a gripping mechanism and a pile driving mechanism connected to and supported by a support frame.

To the extent GB describes anything of relevance to the claimed invention, platform 1 might be characterized as a footing, on which no support frame is described as being mounted. In other words, as noted above in the quoted language, whatever pile driving apparatus which may be present is supported on platform 1.

In addition, there is no description in GB of at least one opening provided in a side of a support frame or other equivalent structure to facilitate removal of the device from around a pile partially extending from the ground. As may be readily appreciated from a review of FIGS. 1 and 3, the configuration and low stature of platform 1 clearly interferes with removal of the device from around piling 2 partially extending from the ground.

Accordingly, claim 4 is not anticipated.

Claim 5 is allowable as depending from claim 4 and, further, because there is, in GB, no opening in a side of a support frame sized to allow a pile partially extending from the ground to pass therethrough.

Claim 6 is allowable as depending from claim 4 and, further, because GB fails to describe two openings on opposite sides of a support frame to facilitate removal of the device from around a pile partially extending from the ground.

Claim 9 is not anticipated by GB, as the reference fails to describe the recited mechanism for gripping a pile and mechanism for driving the pile into the ground, nor of such mechanisms being connected to and supported by a support frame. As noted above with respect to claim 4, whatever apparatus for pile driving is present, it is described as being on platform 1. Further, as claim 9 recites not only a support frame but also a footing including both ground mounted footings and respective frame mounted footings, all three recited components do not and cannot exist in GB. At best, no matter how the description of GB is characterized, only two of the three recited components are present.

Therefore, claim 9 is not anticipated.

Claims 10, 11 and 12 are allowable as depending from claim 9.

Claim 13 is allowable as depending from claim 9 and, further, because GB fails to describe any use of counterweights, nor the specific mounting of counterweights on a support frame.

Claim 14 is allowable as depending from claims 9 and 13 and, further, because there is no description in GB of a pile driving device moveable with counterweights mounted thereon, nor the specific capability of movement with counterweights mounted on a support frame.

Anticipation Rejection Based on Patent No. EP 0 103 283

Claim 7 stands rejected under 35 U.S.C. § 102(b) as being anticipated by EP 0 103 283. Applicant respectfully traverses this rejection, as hereinafter set forth.

Claim 7 is not anticipated as the reference, hereinafter “Vandoni,” fails to describe each and every element as set forth in claim 7, arranged in the same way as recited in the claim. Vandoni fails to describe a support frame or its equivalent and, more specifically, such a structure mounted on a footing. Instead, Vandoni suspends a column 3 in a cantilevered fashion from a vehicle 4. Further, there is no explicit or inherent description of a mechanism for gripping a pile in which the gripping force applied to a pile is adjustable. Therefore, claim 7 is not anticipated.

Anticipation Rejection Based on Patent No. DE 36 15 596

Claim 8 stands rejected under 35 U.S.C. § 102(b) as being anticipated by DE 36 15 596. Applicant respectfully traverses this rejection, as hereinafter set forth.

Claim 8 is not anticipated, as the reference fails to describe each and every element as set forth in claim 8, arranged in the same way as recited in the claim. The reference fails to describe a support frame having a lower end mounted on a footing, as the drawings clearly depict the entire apparatus being carried on a tracked vehicle. Further, there is no disclosure of an upper end of a pile driving mechanism connected to an upper end of a support frame and extending downwardly relative to the support frame. As depicted in FIG. 1 of the reference, and as stated in the Abstract, the jacking head is slidable up and down along mast and lockable thereto in

position. Therefore, the jacking head cannot be said to extend downwardly relative to any support frame. Accordingly, claim 8 is not anticipated.

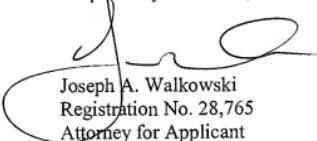
#### ENTRY OF AMENDMENTS

The amendments to claims 1 through 9, 13 and 14 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application.

#### CONCLUSION

Claims 1 through 14 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned attorney.

Respectfully submitted,



Joseph A. Walkowski  
Registration No. 28,765  
Attorney for Applicant

TRASKBRITT  
P.O. Box 2550  
Salt Lake City, Utah 84110-2550  
Telephone: 801-532-1922  
Fax: 801-531-9168

Date: January 8, 2009  
JAW/csk:slm  
Document in ProLaw